

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**MELISSA GREEN,**

**Plaintiff,**

**vs.**

**FOCUS BRANDS INC. d/b/a  
SCHLOTZSKY'S**

**Defendant.**

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**Civil Action No.**

**NOTICE OF REMOVAL**

Defendant Focus Brands Inc. (“Defendant” or “Focus Brands”) in the above-styled action, hereby files its Notice of Removal by and through the undersigned attorneys of record. Pursuant to 28 U.S.C. §§ 1332, 1441(b), and 1446, the above-captioned action is removed from the 272nd Judicial District Court, Brazos County, Texas to the United States District Court for the Southern District of Texas, Houston Division, and as grounds for such removal, Defendant respectfully states as follows:

**I.  
STATE COURT ACTION**

1. On September 27, 2016, Melissa Green (“Plaintiff”) filed Plaintiff’s Original Petition in the 272nd Judicial District Court of Brazos County, Texas, styled *Melissa Green v. Focus Brands Inc. d/b/a Schlotzsky’s*; Cause No. 16-002501-CV-272 (the “State Court Action”).

2. In her Original Petition Plaintiff claims that Defendant discriminated against her in the terms and conditions of her employment on the basis of her female gender. *See Plaintiff’s Original Petition* ¶¶ 20 and 21. Plaintiff further alleges that she was subjected to a hostile work environment and retaliated against once she complained of such behavior in violation of Chapter

21 of the Texas Labor Code and the Texas Commission on Human Rights (“TCHRA”). *See Plaintiff’s Original Petition* ¶ 22 and 23.

## **II.**

### **PROCEDURAL REQUIREMENTS**

3. Defendant was served with the Original Petition on October 25, 2016. Therefore, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b) within thirty (30) days of the receipt of the initial pleading setting forth the claim for relief.

4. This action is properly removed to this Court, as the State Court Action is pending within this district and division. 28 U.S.C. §§ 1441, 1446(a).

5. Pursuant to 28 U.S.C. § 1446(a) and LR 81 Defendant is attaching a true and correct copy of the entire file or record in the State Court Action, including all process, pleadings, and orders served upon Defendant in this action.

6. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly give Plaintiff written notice of the filing of this Notice of Removal, and will promptly file a copy of this Notice of Removal with the District Clerk of Brazos County, Texas.

#### **A. Diversity Jurisdiction**

7. A defendant may remove an action to federal court when there is complete diversity among parties and the amount in controversy exceeds \$75,000. 28 U.S.C. §§ 1332(a) and 1441(a). As set forth below, complete diversity exists in this case, and the amount in controversy requirement is satisfied. Accordingly, removal to this Court is proper.

9. For removal purposes, a corporation is a citizen of both the state where it was incorporated and the state where it maintains its principal place of business. At time this lawsuit was filed and at the time of removal, Defendant Focus Brands was and is incorporated under the laws of the State of Delaware. Focus Brands headquarters and principal place of business was and

is in Atlanta, Georgia. Focus Brands is thus a citizen of the States of Delaware and Georgia. At time this lawsuit was filed and at the time of removal, Plaintiff was and is a citizen of and resident in the State of Texas. *See Plaintiff's Original Petition*, ¶ 2. Thus, the adverse parties are citizens of different states and are completely diverse.

10. It is facially apparent from Plaintiff's Petition that the amount in controversy requirement is met, as she alleges to seek monetary relief over \$200,000.00 but not more than \$1,000,000.00. *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998) ("For diversity purposes, the amount in controversy is determined by the amount sought on the face of the plaintiff's pleadings, so long as the plaintiff's claim is made in good faith."); *De Aguilar v. Boeing Co.*, 47 F. 3d 1404, 1408 (5th Cir.), *cert. denied*, 516 U.S. 865 (1995). Plaintiff also seeks compensatory damages, back pay, front pay, and attorney's fees. *See Plaintiff's Original Petition*, ¶ Prayer. Removal is timely.

12. By filing this Notice of Removal, Defendant does not waive any defenses that may be available to it, including, but not limited to, lack of subject matter jurisdiction, lack of personal jurisdiction, insufficiency of process, insufficiency of service of process, the expiration of any statute of limitations, bar by statute of frauds, or failure by Plaintiff to state any claim upon which relief may be granted.

13. Pursuant to LR 81, the following documents, if applicable, are attached to this Notice of Removal:

- a. All executed process in the case;
- b. Pleadings asserting causes of action, e.g. petitions, counterclaims, cross actions, third party actions, interventions and all answers to such pleadings;
- c. All orders signed by the state judge;
- d. The docket sheet;

- e. An index of matters being filed; and
- f. A list of all counsel of record, including addresses, telephone numbers and parties represented.

**III.**  
**PRAYER**

Wherefore, Defendant removes this action from the 272nd District Court of Brazos County, Texas to the United States District Court for the Southern District of Texas, Houston Division, so that this Court may assume jurisdiction over this case, as provided by law.

Respectfully submitted,

/s/ Rachel Z. Ullrich

Rachel Z. Ullrich

ATTORNEY IN CHARGE

Texas Bar No. 24003234

S.D. Bar No. 22347

1601 Elm Street, Suite 4450

Dallas, Texas 75201

Telephone: (214) 256-470

Facsimile: (214) 256-4701

[rullrich@fordharrison.com](mailto:rullrich@fordharrison.com)

**ATTORNEY FOR DEFENDANT**  
**FOCUS BRANDS INC.**

**CERTIFICATE OF SERVICE**

This is to certify that on this 18<sup>th</sup> day of November, 2016, a true and accurate copy of the foregoing Defendant's *Notice of Removal* was served on the following counsel of record for Plaintiff via ECF:

Gregg M. Rosenberg  
Rosenberg & Sprovach  
3518 Travis Street, Suite 610  
Houston, Texas 77027  
713-960-8300 (Phone)  
713-621-6670 (Fax)

/s/ Rachel Z. Ullrich  
Rachel Z. Ullrich

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**MELISSA GREEN,**

**Plaintiff,**

**vs.**

**FOCUS BRANDS INC. d/b/a  
SCHLOTZSKY'S**

**Defendant.**

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**Civil Action No.**

**INDEX OF ITEMS BEING FILED WITH NOTICE OF REMOVAL**

<b>No.</b>	<b>Date</b>	<b>Description</b>
1	9/27/2016	Plaintiff's Original Petition
2.		Citation
3.	11/14/2016	Defendant's Answer and Affirmative and Other Defenses to Plaintiff's Original Petition
4.	11/18/2016	Docket Sheet
5.	11/18/2016	Notice of Filing Notice of Removal – State
6.	11/18/2016	List of All Counsel of Record and Parties Represented

Filed 9/27/2016 12:47:52 PM  
Marc Hamlin, District Clerk  
Brazos County, Texas  
Kristin Emert

CAUSE NO. 16-002501-CV-272

MELISSA GREEN,  
*Plaintiff*

vs.

FOCUS BRANDS INC. d/b/a  
SCHLOTZSKY'S.  
*Defendant.*

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IN THE DISTRICT COURT OF

BRAZOS COUNTY, TEXAS

\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT

COMES NOW, Melissa Green, (hereinafter referred to as "Green" or "Plaintiff"), complaining of Focus Brands Inc. d/b/a Schlotzsky's (hereinafter referred to as "Schlotzsky's" or "Defendant") and for cause of action would respectfully show this Honorable Court as follows:

**Discovery Control Plan**

1. Discovery in this case should be conducted in accordance with a discovery control plan under Texas Rule of Civil Procedure 190.3 (Level 2).

**Parties**

2. Plaintiff Melissa Green is an individual who resides in Brazos County, College Station, Texas.
3. Defendant Focus Brands Inc. d/b/a Schlotzsky's is a foreign corporation doing business in Texas and employs more than fifteen (15) regular employees. Defendant can be served by serving its registered agent, Corporation Service Company, 40 Technology Parkway South, Suite 300, Ben Hill, Norcross, GA, 30092.

**Jurisdiction and Venue**

4. Venue is appropriate in Harris County pursuant to § 15.002 TEX. CIV. PRAC. & REM. CODE because a substantial part of the events or omissions giving rise to the matter in

controversy before the court occurred in Brazos County, College Station, Texas. The amount in controversy exceeds the minimum jurisdictional limits of this Court.

**Timeliness**

5. Plaintiff brought this suit within sixty (60) days from the date of receipt of Texas Commission on Human Rights issuance of the Notice of Right to File a Civil Action.
6. Plaintiff filed Plaintiff's lawsuit within two years of the date Plaintiff filed his Charge of Discrimination.

**Administrative Conditions Precedent**

7. Plaintiff has completed all administrative conditions precedent, since Plaintiff filed her charge of discrimination within 180 days of the date Plaintiff learned of the adverse employment action.
8. Jurisdiction is also appropriate since this action was filed on or before two years from the date Plaintiff filed her complaint with the Texas Commission on Human Rights.

**No Federal Claims**

9. Plaintiff does not assert any federal claims in this proceeding. Additionally, Plaintiff is in no way seeking damages or remedies that may stem from a federal cause of action.

**Facts**

10. Plaintiff worked for Defendant from approximately Sept. 1, 2015 until her wrongful termination on or about Feb. 20, 2016. At the time of her termination, Plaintiff held the position of cashier and worked at the Schlotzsky's located at 2210 Harvey Mitchell Parkway South, College Station, Texas 77845.



11. Plaintiff's General Manager, Tye Franz and another male Cashier, Brian Merrell repeatedly made sexually suggestive and inappropriate comments in the workplace that made Plaintiff feel harassed and uncomfortable.
12. These comments included but are not limited to:
  - Mr. Franz stating, "I would fuck the shit out of Mark Wahlberg, he is so fucking hot."
  - Plaintiff asked Mr. Franz if they had a 10 inch pizza ready while she was working the drive through and he responded, "yeah, I got 10 inches for ya" while laughing and pointing to his penis.
  - While Plaintiff was working, a male cashier, Brian Merrell openly discussed his sexual details with Mr. Franz, stating his new boyfriend was a virgin and described how "his ass-hole was so tight."
13. Plaintiff felt these comments were inappropriate and made her feel uncomfortable. Plaintiff was disturbed that such conversations were being held in public in the workplace.
14. On or about February 27, 2016, Plaintiff complained to Rico about the hostile work environment she faced. Rico was Plaintiff's direct manager, the Store Manager at the location that Plaintiff worked. She specifically reported the sexual comments that Tye made. She told Rico that while working she was subjected to hearing constant sexual and inappropriate comments and conversations. Plaintiff was hysterically crying and was upset about what was going on. Plaintiff left work that day because she was very distraught, two hours before the end of her shift. Rico begged Plaintiff not to quit and

she stated that she was not quitting she was just too distraught and could not stop crying so had to go home for the rest of the day.

15. The following day after Plaintiff complained about the hostile work environment she was subjected to, Plaintiff learned that she was removed from the schedule. Tye contacted her and claimed that she had quit her job on Feb. 27, 2016 when she left work after speaking with Rico.
16. Plaintiff spoke with a representative from Human Resources, Evelina Rojas, on or about, March 7, 2016, and was told that she was already terminated in the system.
17. Plaintiff had a positive performance record and never received any disciplinary actions prior to her complaint about hostile work environment/sexual harassment.
18. Plaintiff Melissa Green, as specified below, was sexually harassed, discriminated against based on her gender and retaliated against and subjected to a hostile work environment in violation of Texas state laws against discrimination.

#### **Causes of Action**

##### **I.**

##### ***Gender Discrimination, Sexual Harassment, Hostile Work Environment, and Retaliation***

19. Plaintiff hereby incorporates and realleges each and every paragraph of the facts.
20. At all times relevant to this lawsuit Plaintiff was, on account of her sex, female, a member of a protected class.
21. Defendant treated the Plaintiff less favorably in the terms and conditions of her employment than its similarly situated male employees because of her sex, female.
22. Defendant is also liable to Plaintiff for sexual discrimination in that she was the victim of a hostile work environment. Plaintiff was subjected to unwelcomed sexual harassment, the harassment was on account of her sex, the harassment was severe and pervasive, and

it adversely affected the terms and conditions of her employment. Furthermore, Defendant was, or should have been, aware of the sexual harassment to which Plaintiff was subjected and the hostile work environment in which she worked, but took no preventive, prompt, or effective remedial action.

23. The sexual harassment and discriminatory treatment by Defendant was sufficiently pervasive to alter the conditions of Plaintiff's employment and to create a hostile working environment which was intimidating, insulting and abusive to the reasonable person in Plaintiff's position. These acts constitute sexual harassment and/or gender discrimination and retaliation for protesting and reporting sexual harassment and discrimination in violation of Texas Labor Code §21.001 et. seq.
24. This discrimination is the proximate cause of both economic and mental damages suffered by the Plaintiff.
25. As a result of Defendant's mistreatment, discrimination and harassment, and Defendant's refusal to take remedial action on Plaintiff's complaints, Plaintiff was discharged in violation of Texas Labor Code 21.001 et seq.
26. By discriminating against and terminating Plaintiff, Defendant violated the prohibitions against gender discrimination, hostile work environment (based on gender) and retaliation as found in Chapter 21 of the Texas Labor Code and the Texas Commission on Human Rights Act ("TCHRA").
27. Additionally, the aforementioned discrimination/retaliation was done with malice or with reckless disregard for the protected rights of the Plaintiff.

**Attorneys' Fees**

28. Defendant's action and conduct as described herein and the resulting damage and loss to Plaintiff has necessitated Plaintiff retaining the services of ROSENBERG & SPROVACH, 3518 Travis Street, Suite 200, Houston, Texas 77002 in initiating this proceeding. Plaintiff seeks recovery of reasonable and necessary attorney's fees. An award of reasonable and necessary attorney's fees to Plaintiff would be equitable and just and therefore authorized by Section 37.009 of the Civil Practice and Remedies Code.

**Jury Demand**

29. Plaintiff hereby makes Plaintiff's request for a jury trial in this cause pursuant to Rule 216 of the Texas Rules of Civil Procedure and deposits with the District Clerk of Harris County, Texas the jury fee of forty (\$40.00) dollars.

**Claim for Relief**

30. Plaintiff seeks monetary relief over \$200,000.00 but not more than \$1,000,000.00 as set for the at Rule 47(c)(4) of the Texas Rules of Civil Procedure. Damages are in excess of the minimum jurisdictional limits of this court.

**Damages**

31. As a direct and proximate result of the aforementioned arbitrary and capricious acts, the Plaintiff has suffered grievous harm, including, but not limited to, substantial loss of income; humiliation and embarrassment among co-workers and others; sustained damage to Plaintiff's credibility and sustained damage to Plaintiff's prospects for future employment.

**Prayer**

WHEREFORE, Plaintiff requests that Defendant be cited to appear and answer herein, and then on final hearing, Plaintiff have judgment as follows:

- a. Judgment against Defendant, for actual damages sustained by Plaintiff as alleged herein;
- b. Judgment against Defendant, for back pay lost by Plaintiff as alleged herein;
- c. Judgment against Defendant, for front pay by Plaintiff as alleged herein;
- d. Grant Plaintiff general damages for the damage to Plaintiff's reputation;
- e. Pre-judgment interest at the highest legal rate;
- f. Post-judgment interest at the highest legal rate until paid;
- g. Compensatory damages;
- h. Attorney's fees;
- i. All costs of court expended herein;
- j. Such other and further relief, at law or in equity, general or special to which Plaintiff may show Plaintiff justly entitled.

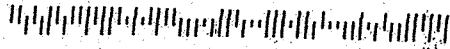
Respectfully submitted,

/s/ Gregg M. Rosenberg  
Gregg M. Rosenberg  
Texas State Bar ID 17268750  
Gregg@rosenberglaw.com  
ROSENBERG & SPROVACH  
3518 Travis, Suite 610  
Houston, Texas 77027  
(713) 960-8300 (Tel)  
(713) 621-6670 (Fax)  
Attorney-in-Charge for Plaintiff

OF COUNSEL:  
ROSENBERG & SPROVACH

ATTORNEYS FOR PLAINTIFF

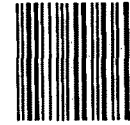
Courthouse Co  
5208 Harrisburg Blvd., Ste. F  
Houston, Texas 77011



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R2305M146464-16

Focus Brands, Inc.  
D/B/A Schlotskys  
Co Corporation Service Company  
40 Technology Parkway South  
Suite 300 - Ben Hill -  
Norcross, GA 30092

## CLERK OF THE COURT

Marc Hamlin  
300 East 26th Street, Suite 1200  
Bryan, TX 77803

## ATTORNEY FOR PLAINTIFF

ROSENBERG, GREGG M.  
3518 TRAVIS SUITE 200  
HOUSTON, TEXAS 77002

## THE STATE OF TEXAS

## CITATION

NOTICE TO THE DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO Focus Brands Inc., D/b/a Schlotzsky's c/o CORPORATION SERVICE COMPANY who may be served at 40 Technology Parkway Southsuite 300, Ben Hill, Norcross, GA 30092 Defendant,

## Greeting:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 272<sup>nd</sup> District Court of Brazos County, Texas at the Courthouse of said County in Bryan, Texas. Said Petition was filed on the 27<sup>th</sup> day of September A.D. 2016, in the case, numbered 16-002501-CV-272 on the docket of said court, and styled,

Melissa Green Plaintiff

VS.

FOCUS BRANDS INC., d/b/a SCHLOTZSKY'S Defendant

The nature of Plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Original Petition accompanying this citation and made a part thereof.

The officer executing the writ shall promptly serve the same according to requirements of the law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and sealed of said Court at office, this the 29<sup>th</sup> day of September, 2016

Marc Hamlin  
Clerk of Brazos County, Texas

By Melissa Green Deputy

## OFFICER'S RETURN

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.  
Executed at \_\_\_\_\_, within the County of \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by delivering to the within named \_\_\_\_\_

each, in person, a true copy of this citation together with the accompanying copy of the petition, having first attached such copy of such petition to such copy of citation and endorsed on such copy of citation the date of delivery.

Total fee for serving this citation \_\_\_\_\_

Sheriff Account

To certify which witness my hand officially.

No. \_\_\_\_\_

For Clerk's Use

Taxed \_\_\_\_\_

Returned Record \_\_\_\_\_

Sheriff of \_\_\_\_\_ County, Texas

By \_\_\_\_\_ Deputy

**CAUSE NO. 16-002501-CV-272**

<b>MELISSA GREEN,</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>vs.</b>	§	<b>272nd JUDICIAL DISTRICT</b>
	§	
<b>FOCUS BRANDS INC. d/b/a</b>	§	
<b>SCHLOTZSKY'S,</b>	§	<b>BRAZOS COUNTY, TEXAS</b>
	§	
<b>Defendant.</b>	§	

**DEFENDANT'S ANSWER AND AFFIRMATIVE AND  
OTHER DEFENSES TO PLAINTIFF'S ORIGINAL PETITION**

COMES NOW, Defendant Focus Brands Inc. ("Defendant" or "Focus Brands"), by and through the undersigned counsel, and files this its Answer and Affirmative and Other Defenses to Plaintiff Melissa Green's ("Plaintiff" or "Green") Original Petition ("Petition"), as follows:

**I.  
GENERAL DENIAL**

Pursuant to Texas Rule of Civil Procedure 92, Defendant generally and specifically denies all of the allegations in Plaintiff's Petition including any and all supplements and amendments thereto, and demands strict proof thereof by a preponderance of the evidence. Further, Defendant denies the performance or occurrence of conditions precedent under Rule 54 of the Texas Rules of Civil Procedure.

**II.  
AFFIRMATIVE AND OTHER DEFENSES**

Defendant pleads the following affirmative and other defenses to the extent such defenses are applicable, and reserves the right to amend its Answer to plead additional or other defenses which may become apparent during discovery in this case:



### **First Defense**

Defendant affirmatively pleads that Plaintiff's Petition fails to state a claim upon which relief may be granted.

### **Second Defense**

Defendant affirmatively pleads that Plaintiff's claims may be barred, in whole or in part, by the applicable statutes of limitations.

### **Third Defense**

Defendant affirmatively pleads that any recovery by Plaintiff in this lawsuit may be precluded or limited by the doctrine of after-acquired evidence.

### **Fourth Defense**

Defendant affirmatively pleads that to the extent Plaintiff failed to mitigate her damages, her claims for lost wages should be denied or, in the alternative, reduced.

### **Fifth Defense**

Defendant affirmatively pleads that any alleged adverse employment actions taken regarding Plaintiff's employment with Focus Brands were based on legitimate, non-discriminatory business decisions and not for any unlawful reason.

### **Sixth Defense**

Defendant asserts that Plaintiff's alleged damages, if any, are too speculative to permit recovery; in the alternative, if Defendant is found liable and damages are awarded, all maximum statutory caps must be applied to Plaintiff's claims by the Court.

### **Seventh Defense**

Defendant asserts that Plaintiff's claims are barred to the extent she has failed to exhaust her administrative remedies.

### **Eighth Defense**

To the extent that they exceed the scope and investigation of Plaintiff's underlying charge of discrimination, Plaintiff's claims and allegations are barred.

### **Ninth Defense**

Pleading in the alternative, and without waiver of Plaintiff's burden to prove that any employment action was motivated by an impermissible factor, Defendant affirmatively pleads that it would have taken the same action in absence of the alleged impermissible motivating factor.

### **Tenth Defense**

Defendant asserts, without admitting that it engaged in any of the acts or conduct attributed to it in the Petition, that Plaintiff's claims and damages are barred in whole or in part by Plaintiff's failure to take reasonable and necessary steps to avoid the harm and/or consequences that she allegedly suffered.

### **Eleventh Defense**

Defendant exercised reasonable care to prevent and promptly correct any allegedly harassing or discriminatory behavior based on a legally protected characteristic of Plaintiff.

### **Twelfth Defense**

Plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities provided by Defendant to avoid the harm about which she complains.

### **Thirteenth Defense**

Defendant denies responsibility or liability for any alleged damages sustained by Plaintiff. However, if Plaintiff has sustained damages, then such damages, if any, should be reduced by the amount Plaintiff could reasonably have mitigated such damages by proper action and by the amount, if any, Plaintiff had actually mitigated such alleged damages, if any.

### **Fourteenth Defense**

Plaintiff's claims are barred because Defendant has, in good faith, acted in conformity with Chapter 21 of the Texas Labor Code f/k/a the Texas Commission on Human Rights Act ("TCHRA").

### **Fifteenth Defense**

Plaintiff's claims are barred by the doctrines of estoppel and/or waiver to the extent that she failed to notify and/or complain to Defendant of the allegations asserted in Plaintiff's Petition.

### **Sixteenth Defense**

Defendant is entitled to an offset for income, compensation and benefits that Plaintiff received from other employers as well as unemployment benefits that may have been paid on her behalf.

### **Seventeenth Defense**

Any and all acts, conduct and/or omissions of Defendant in regard to Plaintiff were taken in good faith and without oppression or malice for Plaintiff and her rights, thereby precluding any and all claims for punitive damages. Plaintiff is not entitled to recover punitive damages because Plaintiff has failed to plead facts sufficient to support allegations of malice, oppression, or fraud, and such damages are either not recoverable or are limited in amount.

**III.**  
**CONCLUSION AND PRAYER**

WHEREFORE, Defendant prays that this Court dismiss Plaintiff's Original Petition, award Defendant attorneys' fees and costs, and order such other and further relief, at law or in equity, to which it may be justly entitled to receive.

Respectfully submitted,

By: Rachel Z. Ullrich  
Rachel Z. Ullrich  
Texas Bar No. 24003234  
[rullrich@fordharrison.com](mailto:rullrich@fordharrison.com)  
Rachel E. Kelly  
Texas Bar No. 24083299  
[rkelly@fordharrisonc.com](mailto:rkelly@fordharrisonc.com)

**FORDHARRISON LLP**  
1601 Elm Street, Suite 4450  
Dallas, Texas 75201  
Telephone: (214) 256-4700  
Facsimile: (214) 256-4701

**ATTORNEYS FOR DEFENDANT  
FOCUS BRANDS INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of November 2016, I filed the above and foregoing *Defendant's Answer and Affirmative and Other Defenses to Plaintiff's Original Petition* with the Clerk of the Court, and have also served a copy of same to all counsel of record as listed below via facsimile:

Gregg M. Rosenberg  
Rosenberg & Sprovach  
3518 Travis Street, Suite 610  
Houston, Texas 77027  
713-960-8300 (Phone)  
713-621-6670 (Fax)

/s/ Rachel Z. Ullrich

Rachel Z. Ullrich

Case Information

16-002501-CV-272 | MELISSA GREEN vs. FOCUS BRANDS INC. D/B/A SCHLOTZSKY'S

Case Number	Court	File Date
16-002501-CV-272	272nd District Court	09/27/2016
Case Type	Case Status	
Civil Case - Other	Filed	

Party

Plaintiff	Active Attorneys ▼
GREEN, MELISSA	Lead Attorney
	ROSENBURG, GREGG M.
	Retained
	Work Phone
	713-960-8300

Defendant  
FOCUS BRANDS INC DBA SCHLOTZSKYS

Address  
40 TECHNOLOGY PARKWAY  
SOUTHSUITE 300  
Norcross GA 30092

Events and Hearings

09/27/2016 New Cases Filed (OCA)
09/27/2016 PLAINTIFF'S ORIGINAL PETITION ▼  PLAINTIFF'S ORIGINAL PETITION
09/29/2016 CITATION ▼  CITATION
09/29/2016 Citation ▼  Comment Name: FOCUS BRANDS INC DBA SCHLOTZSKYS Type: CIT County: 021 Authority: District Clerk Status: N Return: District Clerk
11/14/2016 ANSWER ▼  ANSWER

Financial

No financial information exists for this case.

Documents

PLAINTIFF'S ORIGINAL PETITION

ANSWER

CITATION



**CAUSE NO. 16-002501-CV-272**

<b>MELISSA GREEN,</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>vs.</b>	§	<b>272nd JUDICIAL DISTRICT</b>
	§	
<b>FOCUS BRANDS INC. d/b/a</b>	§	
<b>SCHOLTZSKY'S,</b>	§	<b>BRAZOS COUNTY, TEXAS</b>
	§	
<b>Defendant.</b>	§	

**NOTICE OF FILING NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1446(d), Defendant Focus Brands Inc. hereby gives notice that it has removed this civil action to the United States District Court for the Southern District of Texas, Houston Division, as evidenced by the Notice of Removal filed therein, a copy of which is attached to this Notice as Exhibit 1. This Notice completes the removal of this case to federal court pursuant to 28 U.S.C. § 1446 and precludes this Court from further proceedings in this cause unless and until the action is remanded.

Respectfully submitted,

By: Rachel Z. Ullrich

Rachel D. Ullrich

Texas Bar No. 24003234

[rullrich@fordharrison.com](mailto:rullrich@fordharrison.com)

Rachel E. Kelly

Texas Bar No. 24083299

[rkelly@fordharrisonc.com](mailto:rkelly@fordharrisonc.com)

**FORDHARRISON LLP**

1601 Elm Street, Suite 4450

Dallas, Texas 75201

Telephone: (214) 256-4700

Facsimile: (214) 256-4701

**ATTORNEYS FOR DEFENDANT**

**FOCUS BRANDS INC.**

**CERTIFICATE OF SERVICE**

This is to certify that on this 18<sup>th</sup> day of November, 2016, a true and accurate copy of the foregoing Defendant's *Notice of Filing Notice of Removal* was served on the following counsel of record for Plaintiff via certified mail, return receipt requested:

Gregg M. Rosenberg  
Rosenberg & Sprovach  
3518 Travis Street, Suite 610  
Houston, Texas 77027  
713-960-8300 (Phone)  
713-621-6670 (Fax)

/s/ Rachel Z. Ullrich

Rachel Z. Ullrich

# **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**MELISSA GREEN,**

**Plaintiff,**

**vs.**

**FOCUS BRANDS INC. d/b/a  
SCHLOTZSKY'S**

**Defendant.**

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**Civil Action No.**

**NOTICE OF REMOVAL**

Defendant Focus Brands Inc. (“Defendant” or “Focus Brands”) in the above-styled action, hereby files its Notice of Removal by and through the undersigned attorneys of record. Pursuant to 28 U.S.C. §§ 1332, 1441(b), and 1446, the above-captioned action is removed from the 272nd Judicial District Court, Brazos County, Texas to the United States District Court for the Southern District of Texas, Houston Division, and as grounds for such removal, Defendant respectfully states as follows:

**I.  
STATE COURT ACTION**

1. On September 27, 2016, Melissa Green (“Plaintiff”) filed Plaintiff’s Original Petition in the 272nd Judicial District Court of Brazos County, Texas, styled *Melissa Green v. Focus Brands Inc. d/b/a Schlotzsky’s*; Cause No. 16-002501-CV-272 (the “State Court Action”).

2. In her Original Petition Plaintiff claims that Defendant discriminated against her in the terms and conditions of her employment on the basis of her female gender. *See Plaintiff’s Original Petition* ¶¶ 20 and 21. Plaintiff further alleges that she was subjected to a hostile work environment and retaliated against once she complained of such behavior in violation of Chapter

21 of the Texas Labor Code and the Texas Commission on Human Rights (“TCHRA”). *See Plaintiff’s Original Petition* ¶ 22 and 23.

## **II.**

### **PROCEDURAL REQUIREMENTS**

3. Defendant was served with the Original Petition on October 25, 2016. Therefore, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b) within thirty (30) days of the receipt of the initial pleading setting forth the claim for relief.

4. This action is properly removed to this Court, as the State Court Action is pending within this district and division. 28 U.S.C. §§ 1441, 1446(a).

5. Pursuant to 28 U.S.C. § 1446(a) and LR 81 Defendant is attaching a true and correct copy of the entire file or record in the State Court Action, including all process, pleadings, and orders served upon Defendant in this action.

6. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly give Plaintiff written notice of the filing of this Notice of Removal, and will promptly file a copy of this Notice of Removal with the District Clerk of Brazos County, Texas.

#### **A. Diversity Jurisdiction**

7. A defendant may remove an action to federal court when there is complete diversity among parties and the amount in controversy exceeds \$75,000. 28 U.S.C. §§ 1332(a) and 1441(a). As set forth below, complete diversity exists in this case, and the amount in controversy requirement is satisfied. Accordingly, removal to this Court is proper.

9. For removal purposes, a corporation is a citizen of both the state where it was incorporated and the state where it maintains its principal place of business. At time this lawsuit was filed and at the time of removal, Defendant Focus Brands was and is incorporated under the laws of the State of Delaware. Focus Brands headquarters and principal place of business was and

is in Atlanta, Georgia. Focus Brands is thus a citizen of the States of Delaware and Georgia. At time this lawsuit was filed and at the time of removal, Plaintiff was and is a citizen of and resident in the State of Texas. *See Plaintiff's Original Petition*, ¶ 2. Thus, the adverse parties are citizens of different states and are completely diverse.

10. It is facially apparent from Plaintiff's Petition that the amount in controversy requirement is met, as she alleges to seek monetary relief over \$200,000.00 but not more than \$1,000,000.00. *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998) ("For diversity purposes, the amount in controversy is determined by the amount sought on the face of the plaintiff's pleadings, so long as the plaintiff's claim is made in good faith."); *De Aguilar v. Boeing Co.*, 47 F. 3d 1404, 1408 (5th Cir.), *cert. denied*, 516 U.S. 865 (1995). Plaintiff also seeks compensatory damages, back pay, front pay, and attorney's fees. *See Plaintiff's Original Petition*, ¶ Prayer. Removal is timely.

12. By filing this Notice of Removal, Defendant does not waive any defenses that may be available to it, including, but not limited to, lack of subject matter jurisdiction, lack of personal jurisdiction, insufficiency of process, insufficiency of service of process, the expiration of any statute of limitations, bar by statute of frauds, or failure by Plaintiff to state any claim upon which relief may be granted.

13. Pursuant to LR 81, the following documents, if applicable, are attached to this Notice of Removal:

- a. All executed process in the case;
- b. Pleadings asserting causes of action, e.g. petitions, counterclaims, cross actions, third party actions, interventions and all answers to such pleadings;
- c. All orders signed by the state judge;
- d. The docket sheet;

- e. An index of matters being filed; and
- f. A list of all counsel of record, including addresses, telephone numbers and parties represented.

**III.**  
**PRAYER**

Wherefore, Defendant removes this action from the 272nd District Court of Brazos County, Texas to the United States District Court for the Southern District of Texas, Houston Division, so that this Court may assume jurisdiction over this case, as provided by law.

Respectfully submitted,

/s/ Rachel Z. Ullrich

Rachel Z. Ullrich

ATTORNEY IN CHARGE

Texas Bar No. 24003234

S.D. Bar No. 22347

1601 Elm Street, Suite 4450

Dallas, Texas 75201

Telephone: (214) 256-470

Facsimile: (214) 256-4701

[rullrich@fordharrison.com](mailto:rullrich@fordharrison.com)

**ATTORNEY FOR DEFENDANT**  
**FOCUS BRANDS INC.**

**CERTIFICATE OF SERVICE**

This is to certify that on this 18<sup>th</sup> day of November, 2016, a true and accurate copy of the foregoing Defendant's *Notice of Removal* was served on the following counsel of record for Plaintiff via ECF:

Gregg M. Rosenberg  
Rosenberg & Sprovach  
3518 Travis Street, Suite 610  
Houston, Texas 77027  
713-960-8300 (Phone)  
713-621-6670 (Fax)

/s/ Rachel Z. Ullrich  
Rachel Z. Ullrich



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**MELISSA GREEN,**

**Plaintiff,**

**vs.**

**FOCUS BRANDS INC. d/b/a  
SCHLOTZSKY'S**

**Defendant.**

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**Civil Action No.**

**INDEX OF ITEMS BEING FILED WITH NOTICE OF REMOVAL**

<b>No.</b>	<b>Date</b>	<b>Description</b>
1	9/27/2016	Plaintiff's Original Petition
2.		Citation
3.	11/14/2016	Defendant's Answer and Affirmative and Other Defenses to Plaintiff's Original Petition
4.	11/18/2016	Docket Sheet
5.	11/18/2016	Notice of Filing Notice of Removal – State
6.	11/18/2016	List of All Counsel of Record and Parties Represented

Filed 9/27/2016 12:47:52 PM  
Marc Hamlin, District Clerk  
Brazos County, Texas  
Kristin Emert

CAUSE NO. 16-002501-CV-272

MELISSA GREEN,  
*Plaintiff*

vs.

FOCUS BRANDS INC. d/b/a  
SCHLOTZSKY'S.  
*Defendant.*

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IN THE DISTRICT COURT OF

BRAZOS COUNTY, TEXAS

\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT

COMES NOW, Melissa Green, (hereinafter referred to as "Green" or "Plaintiff"), complaining of Focus Brands Inc. d/b/a Schlotzsky's (hereinafter referred to as "Schlotzsky's" or "Defendant") and for cause of action would respectfully show this Honorable Court as follows:

**Discovery Control Plan**

1. Discovery in this case should be conducted in accordance with a discovery control plan under Texas Rule of Civil Procedure 190.3 (Level 2).

**Parties**

2. Plaintiff Melissa Green is an individual who resides in Brazos County, College Station, Texas.
3. Defendant Focus Brands Inc. d/b/a Schlotzsky's is a foreign corporation doing business in Texas and employs more than fifteen (15) regular employees. Defendant can be served by serving its registered agent, Corporation Service Company, 40 Technology Parkway South, Suite 300, Ben Hill, Norcross, GA, 30092.

**Jurisdiction and Venue**

4. Venue is appropriate in Harris County pursuant to § 15.002 TEX. CIV. PRAC. & REM. CODE because a substantial part of the events or omissions giving rise to the matter in

controversy before the court occurred in Brazos County, College Station, Texas. The amount in controversy exceeds the minimum jurisdictional limits of this Court.

**Timeliness**

5. Plaintiff brought this suit within sixty (60) days from the date of receipt of Texas Commission on Human Rights issuance of the Notice of Right to File a Civil Action.
6. Plaintiff filed Plaintiff's lawsuit within two years of the date Plaintiff filed his Charge of Discrimination.

**Administrative Conditions Precedent**

7. Plaintiff has completed all administrative conditions precedent, since Plaintiff filed her charge of discrimination within 180 days of the date Plaintiff learned of the adverse employment action.
8. Jurisdiction is also appropriate since this action was filed on or before two years from the date Plaintiff filed her complaint with the Texas Commission on Human Rights.

**No Federal Claims**

9. Plaintiff does not assert any federal claims in this proceeding. Additionally, Plaintiff is in no way seeking damages or remedies that may stem from a federal cause of action.

**Facts**

10. Plaintiff worked for Defendant from approximately Sept. 1, 2015 until her wrongful termination on or about Feb. 20, 2016. At the time of her termination, Plaintiff held the position of cashier and worked at the Schlotzsky's located at 2210 Harvey Mitchell Parkway South, College Station, Texas 77845.

11. Plaintiff's General Manager, Tye Franz and another male Cashier, Brian Merrell repeatedly made sexually suggestive and inappropriate comments in the workplace that made Plaintiff feel harassed and uncomfortable.
12. These comments included but are not limited to:
  - Mr. Franz stating, "I would fuck the shit out of Mark Wahlberg, he is so fucking hot."
  - Plaintiff asked Mr. Franz if they had a 10 inch pizza ready while she was working the drive through and he responded, "yeah, I got 10 inches for ya" while laughing and pointing to his penis.
  - While Plaintiff was working, a male cashier, Brian Merrell openly discussed his sexual details with Mr. Franz, stating his new boyfriend was a virgin and described how "his ass-hole was so tight."
13. Plaintiff felt these comments were inappropriate and made her feel uncomfortable. Plaintiff was disturbed that such conversations were being held in public in the workplace.
14. On or about February 27, 2016, Plaintiff complained to Rico about the hostile work environment she faced. Rico was Plaintiff's direct manager, the Store Manager at the location that Plaintiff worked. She specifically reported the sexual comments that Tye made. She told Rico that while working she was subjected to hearing constant sexual and inappropriate comments and conversations. Plaintiff was hysterically crying and was upset about what was going on. Plaintiff left work that day because she was very distraught, two hours before the end of her shift. Rico begged Plaintiff not to quit and

she stated that she was not quitting she was just too distraught and could not stop crying so had to go home for the rest of the day.

15. The following day after Plaintiff complained about the hostile work environment she was subjected to, Plaintiff learned that she was removed from the schedule. Tye contacted her and claimed that she had quit her job on Feb. 27, 2016 when she left work after speaking with Rico.
16. Plaintiff spoke with a representative from Human Resources, Evelina Rojas, on or about, March 7, 2016, and was told that she was already terminated in the system.
17. Plaintiff had a positive performance record and never received any disciplinary actions prior to her complaint about hostile work environment/sexual harassment.
18. Plaintiff Melissa Green, as specified below, was sexually harassed, discriminated against based on her gender and retaliated against and subjected to a hostile work environment in violation of Texas state laws against discrimination.

#### **Causes of Action**

##### **I.**

##### ***Gender Discrimination, Sexual Harassment, Hostile Work Environment, and Retaliation***

19. Plaintiff hereby incorporates and realleges each and every paragraph of the facts.
20. At all times relevant to this lawsuit Plaintiff was, on account of her sex, female, a member of a protected class.
21. Defendant treated the Plaintiff less favorably in the terms and conditions of her employment than its similarly situated male employees because of her sex, female.
22. Defendant is also liable to Plaintiff for sexual discrimination in that she was the victim of a hostile work environment. Plaintiff was subjected to unwelcomed sexual harassment, the harassment was on account of her sex, the harassment was severe and pervasive, and

it adversely affected the terms and conditions of her employment. Furthermore, Defendant was, or should have been, aware of the sexual harassment to which Plaintiff was subjected and the hostile work environment in which she worked, but took no preventive, prompt, or effective remedial action.

23. The sexual harassment and discriminatory treatment by Defendant was sufficiently pervasive to alter the conditions of Plaintiff's employment and to create a hostile working environment which was intimidating, insulting and abusive to the reasonable person in Plaintiff's position. These acts constitute sexual harassment and/or gender discrimination and retaliation for protesting and reporting sexual harassment and discrimination in violation of Texas Labor Code §21.001 et. seq.
24. This discrimination is the proximate cause of both economic and mental damages suffered by the Plaintiff.
25. As a result of Defendant's mistreatment, discrimination and harassment, and Defendant's refusal to take remedial action on Plaintiff's complaints, Plaintiff was discharged in violation of Texas Labor Code 21.001 et seq.
26. By discriminating against and terminating Plaintiff, Defendant violated the prohibitions against gender discrimination, hostile work environment (based on gender) and retaliation as found in Chapter 21 of the Texas Labor Code and the Texas Commission on Human Rights Act ("TCHRA").
27. Additionally, the aforementioned discrimination/retaliation was done with malice or with reckless disregard for the protected rights of the Plaintiff.

**Attorneys' Fees**

28. Defendant's action and conduct as described herein and the resulting damage and loss to Plaintiff has necessitated Plaintiff retaining the services of ROSENBERG & SPROVACH, 3518 Travis Street, Suite 200, Houston, Texas 77002 in initiating this proceeding. Plaintiff seeks recovery of reasonable and necessary attorney's fees. An award of reasonable and necessary attorney's fees to Plaintiff would be equitable and just and therefore authorized by Section 37.009 of the Civil Practice and Remedies Code.

**Jury Demand**

29. Plaintiff hereby makes Plaintiff's request for a jury trial in this cause pursuant to Rule 216 of the Texas Rules of Civil Procedure and deposits with the District Clerk of Harris County, Texas the jury fee of forty (\$40.00) dollars.

**Claim for Relief**

30. Plaintiff seeks monetary relief over \$200,000.00 but not more than \$1,000,000.00 as set for the at Rule 47(c)(4) of the Texas Rules of Civil Procedure. Damages are in excess of the minimum jurisdictional limits of this court.

**Damages**

31. As a direct and proximate result of the aforementioned arbitrary and capricious acts, the Plaintiff has suffered grievous harm, including, but not limited to, substantial loss of income; humiliation and embarrassment among co-workers and others; sustained damage to Plaintiff's credibility and sustained damage to Plaintiff's prospects for future employment.

**Prayer**

WHEREFORE, Plaintiff requests that Defendant be cited to appear and answer herein, and then on final hearing, Plaintiff have judgment as follows:

- a. Judgment against Defendant, for actual damages sustained by Plaintiff as alleged herein;
- b. Judgment against Defendant, for back pay lost by Plaintiff as alleged herein;
- c. Judgment against Defendant, for front pay by Plaintiff as alleged herein;
- d. Grant Plaintiff general damages for the damage to Plaintiff's reputation;
- e. Pre-judgment interest at the highest legal rate;
- f. Post-judgment interest at the highest legal rate until paid;
- g. Compensatory damages;
- h. Attorney's fees;
- i. All costs of court expended herein;
- j. Such other and further relief, at law or in equity, general or special to which Plaintiff may show Plaintiff justly entitled.

Respectfully submitted,

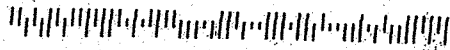
/s/ Gregg M. Rosenberg  
Gregg M. Rosenberg  
Texas State Bar ID 17268750  
Gregg@rosenberglaw.com  
ROSENBERG & SPROVACH  
3518 Travis, Suite 610  
Houston, Texas 77027  
(713) 960-8300 (Tel)  
(713) 621-6670 (Fax)  
Attorney-in-Charge for Plaintiff

OF COUNSEL:  
ROSENBERG & SPROVACH

ATTORNEYS FOR PLAINTIFF



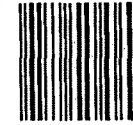
Courthouse Co  
5208 Harrisburg Blvd., Ste. F  
Houston, Texas 77011



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R2305M146464-16

Focus Brands, Inc.  
D/B/A Schlitzky's  
Co Corporation Service Company  
40 Technology Parkway South  
Suite 300 - Ben Hill -  
Norcross, GA 30092

## CLERK OF THE COURT

Marc Hamlin  
300 East 26th Street, Suite 1200  
Bryan, TX 77803

## ATTORNEY FOR PLAINTIFF

ROSENBERG, GREGG M.  
3518 TRAVIS SUITE 200  
HOUSTON, TEXAS 77002

## THE STATE OF TEXAS

## CITATION

NOTICE TO THE DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO Focus Brands Inc., D/b/a Schlotzsky's c/o CORPORATION SERVICE COMPANY who may be served at 40 Technology Parkway Southsuite 300, Ben Hill, Norcross, GA 30092 Defendant,

## Greeting:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 272<sup>nd</sup> District Court of Brazos County, Texas at the Courthouse of said County in Bryan, Texas. Said Petition was filed on the 27<sup>th</sup> day of September A.D. 2016, in the case, numbered 16-002501-CV-272 on the docket of said court, and styled,

Melissa Green Plaintiff

VS.

FOCUS BRANDS INC., d/b/a SCHLOTZSKY'S Defendant

The nature of Plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Original Petition accompanying this citation and made a part thereof.

The officer executing the writ shall promptly serve the same according to requirements of the law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and sealed of said Court at office, this the 29<sup>th</sup> day of September, 2016

Marc Hamlin  
Clerk of Brazos County, Texas

By Melissa Green Deputy

## OFFICER'S RETURN

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.  
Executed at \_\_\_\_\_, within the County of \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by delivering to the within named \_\_\_\_\_

each, in person, a true copy of this citation together with the accompanying copy of the petition, having first attached such copy of such petition to such copy of citation and endorsed on such copy of citation the date of delivery.

Total fee for serving this citation \_\_\_\_\_

Sheriff Account

To certify which witness my hand officially.

No. \_\_\_\_\_

For Clerk's Use

Taxed \_\_\_\_\_

Returned Record \_\_\_\_\_

Sheriff of \_\_\_\_\_ County, Texas

By \_\_\_\_\_ Deputy

**CAUSE NO. 16-002501-CV-272****MELISSA GREEN,****Plaintiff,****vs.****FOCUS BRANDS INC. d/b/a  
SCHLOTZSKY'S,****Defendant.**§  
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§**IN THE DISTRICT COURT****272nd JUDICIAL DISTRICT****BRAZOS COUNTY, TEXAS****DEFENDANT'S ANSWER AND AFFIRMATIVE AND  
OTHER DEFENSES TO PLAINTIFF'S ORIGINAL PETITION**

COMES NOW, Defendant Focus Brands Inc. ("Defendant" or "Focus Brands"), by and through the undersigned counsel, and files this its Answer and Affirmative and Other Defenses to Plaintiff Melissa Green's ("Plaintiff" or "Green") Original Petition ("Petition"), as follows:

**I.  
GENERAL DENIAL**

Pursuant to Texas Rule of Civil Procedure 92, Defendant generally and specifically denies all of the allegations in Plaintiff's Petition including any and all supplements and amendments thereto, and demands strict proof thereof by a preponderance of the evidence. Further, Defendant denies the performance or occurrence of conditions precedent under Rule 54 of the Texas Rules of Civil Procedure.

**II.  
AFFIRMATIVE AND OTHER DEFENSES**

Defendant pleads the following affirmative and other defenses to the extent such defenses are applicable, and reserves the right to amend its Answer to plead additional or other defenses which may become apparent during discovery in this case:

### **First Defense**

Defendant affirmatively pleads that Plaintiff's Petition fails to state a claim upon which relief may be granted.

### **Second Defense**

Defendant affirmatively pleads that Plaintiff's claims may be barred, in whole or in part, by the applicable statutes of limitations.

### **Third Defense**

Defendant affirmatively pleads that any recovery by Plaintiff in this lawsuit may be precluded or limited by the doctrine of after-acquired evidence.

### **Fourth Defense**

Defendant affirmatively pleads that to the extent Plaintiff failed to mitigate her damages, her claims for lost wages should be denied or, in the alternative, reduced.

### **Fifth Defense**

Defendant affirmatively pleads that any alleged adverse employment actions taken regarding Plaintiff's employment with Focus Brands were based on legitimate, non-discriminatory business decisions and not for any unlawful reason.

### **Sixth Defense**

Defendant asserts that Plaintiff's alleged damages, if any, are too speculative to permit recovery; in the alternative, if Defendant is found liable and damages are awarded, all maximum statutory caps must be applied to Plaintiff's claims by the Court.

### **Seventh Defense**

Defendant asserts that Plaintiff's claims are barred to the extent she has failed to exhaust her administrative remedies.

### **Eighth Defense**

To the extent that they exceed the scope and investigation of Plaintiff's underlying charge of discrimination, Plaintiff's claims and allegations are barred.

### **Ninth Defense**

Pleading in the alternative, and without waiver of Plaintiff's burden to prove that any employment action was motivated by an impermissible factor, Defendant affirmatively pleads that it would have taken the same action in absence of the alleged impermissible motivating factor.

### **Tenth Defense**

Defendant asserts, without admitting that it engaged in any of the acts or conduct attributed to it in the Petition, that Plaintiff's claims and damages are barred in whole or in part by Plaintiff's failure to take reasonable and necessary steps to avoid the harm and/or consequences that she allegedly suffered.

### **Eleventh Defense**

Defendant exercised reasonable care to prevent and promptly correct any allegedly harassing or discriminatory behavior based on a legally protected characteristic of Plaintiff.

### **Twelfth Defense**

Plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities provided by Defendant to avoid the harm about which she complains.

### **Thirteenth Defense**

Defendant denies responsibility or liability for any alleged damages sustained by Plaintiff. However, if Plaintiff has sustained damages, then such damages, if any, should be reduced by the amount Plaintiff could reasonably have mitigated such damages by proper action and by the amount, if any, Plaintiff had actually mitigated such alleged damages, if any.

### **Fourteenth Defense**

Plaintiff's claims are barred because Defendant has, in good faith, acted in conformity with Chapter 21 of the Texas Labor Code f/k/a the Texas Commission on Human Rights Act ("TCHRA").

### **Fifteenth Defense**

Plaintiff's claims are barred by the doctrines of estoppel and/or waiver to the extent that she failed to notify and/or complain to Defendant of the allegations asserted in Plaintiff's Petition.

### **Sixteenth Defense**

Defendant is entitled to an offset for income, compensation and benefits that Plaintiff received from other employers as well as unemployment benefits that may have been paid on her behalf.

### **Seventeenth Defense**

Any and all acts, conduct and/or omissions of Defendant in regard to Plaintiff were taken in good faith and without oppression or malice for Plaintiff and her rights, thereby precluding any and all claims for punitive damages. Plaintiff is not entitled to recover punitive damages because Plaintiff has failed to plead facts sufficient to support allegations of malice, oppression, or fraud, and such damages are either not recoverable or are limited in amount.

**III.**  
**CONCLUSION AND PRAYER**

WHEREFORE, Defendant prays that this Court dismiss Plaintiff's Original Petition, award Defendant attorneys' fees and costs, and order such other and further relief, at law or in equity, to which it may be justly entitled to receive.

Respectfully submitted,

By: Rachel Z. Ullrich  
Rachel Z. Ullrich  
Texas Bar No. 24003234  
[rullrich@fordharrison.com](mailto:rullrich@fordharrison.com)  
Rachel E. Kelly  
Texas Bar No. 24083299  
[rkelly@fordharrison.com](mailto:rkelly@fordharrison.com)

**FORDHARRISON LLP**  
1601 Elm Street, Suite 4450  
Dallas, Texas 75201  
Telephone: (214) 256-4700  
Facsimile: (214) 256-4701

**ATTORNEYS FOR DEFENDANT  
FOCUS BRANDS INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of November 2016, I filed the above and foregoing *Defendant's Answer and Affirmative and Other Defenses to Plaintiff's Original Petition* with the Clerk of the Court, and have also served a copy of same to all counsel of record as listed below via facsimile:

Gregg M. Rosenberg  
Rosenberg & Sprovach  
3518 Travis Street, Suite 610  
Houston, Texas 77027  
713-960-8300 (Phone)  
713-621-6670 (Fax)

/s/ Rachel Z. Ullrich

Rachel Z. Ullrich



Case Information

16-002501-CV-272 | MELISSA GREEN vs. FOCUS BRANDS INC. D/B/A SCHLOTZSKY'S

Case Number	Court	File Date
16-002501-CV-272	272nd District Court	09/27/2016
Case Type	Case Status	
Civil Case - Other	Filed	

Party

Plaintiff	Active Attorneys ▼
GREEN, MELISSA	Lead Attorney
	ROSENBURG, GREGG M.
	Retained
	Work Phone
	713-960-8300

Defendant  
FOCUS BRANDS INC DBA SCHLOTZSKYS  
  
Address  
40 TECHNOLOGY PARKWAY  
SOUTHSUITE 300  
Norcross GA 30092

## Events and Hearings

09/27/2016 New Cases Filed (OCA)
09/27/2016 PLAINTIFF'S ORIGINAL PETITION ▼  PLAINTIFF'S ORIGINAL PETITION
09/29/2016 CITATION ▼  CITATION
09/29/2016 Citation ▼  Comment Name: FOCUS BRANDS INC DBA SCHLOTZSKYS Type: CIT County: 021 Authority: District Clerk Status: N Return: District Clerk
11/14/2016 ANSWER ▼  ANSWER

## Financial

No financial information exists for this case.

## Documents

PLAINTIFF'S ORIGINAL PETITION

ANSWER

CITATION

**LIST OF ALL COUNSEL OF RECORD AND PARTIES REPRESENTED**

Gregg M. Rosenberg  
Texas Bar No. 17268750  
Gregg@rosenberglaw.com  
**ROSENBERG & SPROVACH**  
3518 Travis Street, Suite 610  
Houston, Texas 77027  
713-960-8300 (Phone)  
713-621-6670 (Fax)

**ATTORNEY FOR PLAINTIFF**

Rachel Z. Ullrich  
ATTORNEY IN CHARGE  
Texas Bar No. 24003234  
S.D. ID No. 22347  
[RUllrich@fordharrison.com](mailto:RUllrich@fordharrison.com)  
**FORDHARRISON LLP**  
1601 Elm Street, Suite 4450  
Dallas, Texas 75201  
214-256-4700  
214-256-4701 (Facsimile)

**ATTORNEY FOR DEFENDANT  
FOCUS BRANDS INC.**